IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9587 of 2005
With
SPECIAL CIVIL APPLICATION No. 9576 of 2005
With
SPECIAL CIVIL APPLICATION No. 24600 of 2005

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL JAGDISH PREMJIBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SK PATEL for Petitioners
MR KB TRIVEDI, AAG with MS SANGEETA VISHEN, AGP, for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 07/04/2006

ORAL JUDGMENT (Per: HONOURABLE MS.JUSTICE R.M.DOSHIT)

These three petitions are preferred by the residents of village Dakhneshwar, taluka Bayad, whose lands are acquired for “Sujlam Suflam Spreading Canal” project. The part of the said canal, chainage 87.3 Kms. to chainage 91.7 Kms., passes through the lands of village Dakhneshwar which has affected the petitioners. It is the grievance of the petitioners that the passage of canal originally proposed was through certain lands which did not affect the present petitioners. However, with a view to obliging some, contrary to the experts' advice, the State Government has changed the alignment of the said canal so as to affect the present petitioners.

Mr.Patel has relied on the judgment of the Honourable Supreme Court in the matter of **Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Cenai and Others [2005 AIR SCW 4796]**. He has submitted that the action of the State Government is subject to the judicial review and the action, if illegal or malafide, cannot be sustained by the Court. He has

relied upon the averments of malafide made in paragraph-10 of the petition. It is submitted that the original alignment of the canal affected one particular piece of land Survey No.8 which belongs to one Devshibhai Ravjibhai Patel of village Madhavkampa. The said Devshibhai Ravjibhai Patel is politically connected with the ruling party namely B.J.P. Precisely with a view to saving the land of the said Devshibhai the alignment proposed by the experts has been changed by the executive. In the submission of Mr.Patel the malafide is explicit, the Court should, therefore, interfere with the decision of the State Government.

The petitions are contested by the State Government. Mr.Trivedi has taken us through the counter affidavits and the minutes of the meeting of the experts' committee placed on the record of the matters. He has submitted that the original alignment proposed by the experts was made without the field survey. After the field survey was made another alignment was proposed. However, the proposed altered alignment also was required to be altered further

keeping in view the present Vatrak canal passing through the lands of the said village Dakhneshwar. Care has been taken to remove sharp bend. The experts have also taken into consideration the extent of land acquisition required for the project. In the submission of Mr.Trivedi, though the petitioners have alleged malafide, the allegations have not been brought home. No specific allegations are made against any individual. He has further submitted that the scope for judicial interference in such matters is minimal and the Court should not interfere with the policy decision of the State, acting on the advice from the experts. In support of his submissions, Mr.Trivedi has relied upon the judgments of the Honourable Supreme Court in the matter of **Balco Employees' Union (Regd.) v. Union of India & others [(2002)2 SCC 333]** and of **Tata Cellular v. Union of India [(1994)6 SCC 651]**.

We have perused the record. As far as the allegations of malafide are concerned, they are too vague and based on presumptions and surmises. The Court shall not interfere with the policy decision of

the State Government on flimsy allegations of malafide. If the State Government has taken certain decision with the experts at its aid, the Court shall not interfere with such a decision.

We are of the opinion that these petitions are devoid of any merit. The impending project taken up for ground water recharging need not be interfered by this Court. Petitions are dismissed. Rule *nisi* issued in each petition is discharged. The Registry will maintain copy of this judgment in each petition. Parties shall bear their own costs.

(Miss R.M.Doshit, J.)

(Smt. Abhilasha Kumari, J.)

(sunil)